



## 1997 SENATE BILL 312

October 1, 1997 - Introduced by Senators PLACHE and ROESSLER, cosponsored by Representatives LA FAVE, MUSSER, SYKORA, LAZICH, L. YOUNG and MORRIS-TATUM. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1     **AN ACT to renumber and amend** 252.15 (2) (b) 1. and 252.15 (5) (a) 1.; **to amend**  
2             55.05 (5) (d), 146.81 (5), chapter 155 (title), 252.15 (2) (b) (intro.), 252.15 (2) (b)  
3             3. a., 252.15 (2) (b) 3. b., 252.15 (3), 252.15 (5) (a) (intro.), 632.67, 632.775 (2) and  
4             880.33 (3); and **to create** 155.01 (7m), 155.01 (13), 155.90, 252.15 (2) (b) 1. b.  
5             and 252.15 (5) (a) 1. b. of the statutes; **relating to:** permitting certain persons  
6             to make health care decisions for incapacitated persons.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, a person who is of sound mind and has attained the age of 18 (principal) may execute a power of attorney for health care instrument to designate another person (health care agent) to make certain health care decisions on behalf of the principal in the event that the principal becomes incapacitated and cannot make health care decisions on his or her own behalf.

This bill authorizes the following persons in the following order of priority, with certain exceptions, to make most health care decisions on behalf of an incapacitated person who has not executed a power of attorney for health care instrument:

1. The spouse of the incapacitated person.
2. An adult child of the incapacitated person.
3. A parent of the incapacitated person.
4. An adult sibling of the incapacitated person.
5. A grandparent of the incapacitated person.

**SENATE BILL 312**

6. An adult grandchild of the incapacitated person.

7. An adult close friend of the incapacitated person.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 55.05 (5) (d) of the statutes is amended to read:

2           55.05 (5) (d) The admission to a facility of a principal by a health care agent  
3 under the terms of a power of attorney for health care instrument and in accordance  
4 with ch. 155, or of an incapacitated individual by a surrogate under s. 155.90, or the  
5 admission of an individual to a nursing home or community-based residential  
6 facility under the requirements of s. 50.06 is not a protective placement under this  
7 chapter.

8           **SECTION 2.** 146.81 (5) of the statutes is amended to read:

9           146.81 (5) “Person authorized by the patient” means the parent, guardian or  
10 legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person  
11 vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n),  
12 the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4),  
13 the personal representative or spouse of a deceased patient, any person authorized  
14 in writing by the patient or a health care agent designated by the patient as a  
15 principal under ch. 155 if the patient has been found to be incapacitated under s.  
16 155.05 (2), except as limited by the power of attorney for health care instrument, or,  
17 if the patient has not executed a power of attorney for health care instrument under  
18 ch. 155, and the patient has been found to be incapacitated under s. 155.90 (3), the  
19 surrogate under s. 155.90 (2). If no spouse survives a deceased patient, “person  
20 authorized by the patient” also means an adult member of the deceased patient’s

**SENATE BILL 312**

1 immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary  
2 guardian for a patient believed incompetent to consent to the release of records under  
3 this section as the person authorized by the patient to decide upon the release of  
4 records, if no guardian has been appointed for the patient.

5 **SECTION 3.** Chapter 155 (title) of the statutes is amended to read:

6 **CHAPTER 155**

7 **POWER OF ATTORNEY FOR**

8 **HEALTH CARE AND HEALTH CARE**

9 **DECISIONS BY OTHER PERSONS**

10 **SECTION 4.** 155.01 (7m) of the statutes is created to read:

11 155.01 (7m) "Incapacitated" means unable to receive and evaluate information  
12 effectively or to communicate decisions to such an extent that the individual lacks  
13 the capacity to manage his or her health care decisions, including decisions about his  
14 or her post-hospital care.

15 **SECTION 5.** 155.01 (13) of the statutes is created to read:

16 155.01 (13) "Surrogate" means an individual authorized under s. 155.90 (2) to  
17 make health care decisions on behalf of another who cannot make health care  
18 decisions because of incapacity.

19 **SECTION 6.** 155.90 of the statutes is created to read:

20 **155.90 Health care decisions for incapacitated persons without a**  
21 **power of attorney for health care. (1)** An individual under sub. (2) may make  
22 health care decisions on behalf of an incapacitated individual who does not have a  
23 valid power of attorney for health care and who has not been adjudicated  
24 incompetent under ch. 880, if all of the following apply:

**SENATE BILL 312****SECTION 6**

1 (a) No individual who is listed under sub. (2) in the same order of priority as,  
2 or higher in priority than, the individual who is making the health care decision  
3 disagrees with the decision.

4 (b) 1. Except as provided in subd. 2., no individual who is listed under sub. (2)  
5 and who resides with the incapacitated individual disagrees with the health care  
6 decision.

7 2. Subdivision 1. does not apply if any of the following applies:

8 a. The individual who is making the health care decision resides with the  
9 incapacitated individual.

10 b. The individual who is making the health care decision is the spouse of the  
11 incapacitated individual.

12 (c) The individual on whose behalf the health care decision is being made is not  
13 diagnosed as developmentally disabled or as having a mental illness at the time of  
14 the health care decision.

15 **(2)** The following individuals, in the following order of priority, may make a  
16 health care decision on behalf of an incapacitated individual:

17 (a) The spouse of the incapacitated individual.

18 (b) An adult child of the incapacitated individual.

19 (c) A parent of the incapacitated individual.

20 (d) An adult sibling of the incapacitated individual.

21 (e) A grandparent of the incapacitated individual.

22 (f) An adult grandchild of the incapacitated individual.

23 (g) An adult close friend of the incapacitated individual.

24 **(3)** A determination that an individual is incapacitated for purposes of sub. (1)  
25 shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one

**SENATE BILL 312**

1 licensed psychologist, as defined in s. 455.01 (4), who personally examine the  
2 individual and sign a statement specifying that the individual is incapacitated. Mere  
3 old age, eccentricity or physical disability, either singly or together, are insufficient  
4 to make a finding that an individual is incapacitated. Neither of the individuals who  
5 makes a finding that an individual is incapacitated may be a relative, as defined in  
6 s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has  
7 a claim on any portion of the individual's estate. A copy of the statement shall be  
8 included in the individual's records in the facility to which he or she is admitted.

9 (4) Except as specified in subs. (5) (a) and (b), (6) and (7), the surrogate who is  
10 known to the health care provider to be available to make health care decisions for  
11 the incapacitated individual has priority over any individual other than the  
12 incapacitated individual to make these health care decisions.

13 (5) (a) A surrogate may not consent to admission of the incapacitated  
14 individual on an inpatient basis to any of the following:

15 1. An institution for mental diseases, as defined in s. 49.43 (6m).

16 2. An intermediate care facility for the mentally retarded, as defined in s.  
17 46.278 (1m) (am).

18 3. A state treatment facility, as defined in s. 51.01 (15).

19 4. A treatment facility, as defined in s. 51.01 (19).

20 (b) An incapacitated individual may be admitted or committed on an inpatient  
21 basis to a facility specified in par. (a) 1. to 4. only under the applicable requirements  
22 of ch. 51 or 55.

23 (c) 1. In this paragraph:

24 a. "Community-based residential facility" has the meaning given in s. 50.01  
25 (1g).

**SENATE BILL 312****SECTION 6**

1           b. "Nursing home" has the meaning given in s. 50.01 (3).

2           2. A surrogate may consent to the admission of an incapacitated individual to  
3 the following facilities, under the following conditions:

4           a. To a nursing home, for recuperative care for a period not to exceed 3 months,  
5 if the incapacitated individual is admitted directly from a hospital inpatient unit,  
6 unless the hospital admission was for psychiatric care.

7           b. If the incapacitated individual lives with the surrogate, to a nursing home  
8 or a community-based residential facility, as a temporary placement not to exceed  
9 30 days, in order to provide the surrogate with a vacation or to release temporarily  
10 the surrogate for a family emergency.

11           c. To a nursing home or a community-based residential facility, for purposes  
12 other than those specified in subd. 2. a. and b., if the incapacitated individual is not  
13 diagnosed as developmentally disabled or as having a mental illness at the time of  
14 the proposed admission.

15           **(6)** A surrogate may not consent to experimental mental health research or to  
16 psychosurgery, electroconvulsive treatment or drastic mental health treatment  
17 procedures for the incapacitated individual.

18           **(7)** A surrogate may consent to the withholding or withdrawal of a feeding tube  
19 for the incapacitated individual, unless the principal's attending physician advises  
20 that, in his or her professional judgment, the withholding or withdrawal will cause  
21 the incapacitated individual pain or reduce that individual's comfort. A surrogate  
22 may not consent to the withholding or withdrawal of orally ingested nutrition or  
23 hydration unless provision of the nutrition or hydration is medically  
24 contraindicated.

**SENATE BILL 312**

1           **(8)** The surrogate shall act in good faith consistently with the desires of the  
2 incapacitated individual as expressed or otherwise specifically directed by the  
3 incapacitated individual to the surrogate at any time. The surrogate shall act in good  
4 faith consistently with any valid declaration executed by the incapacitated  
5 individual under subch. II of ch. 154. In the absence of a specific directive by the  
6 incapacitated individual or if the desires of the incapacitated individual are  
7 unknown, the surrogate shall, in good faith, act in the best interests of the  
8 incapacitated individual in exercising his or her authority.

9           **(9)** If the incapacitated individual is known to be pregnant, the surrogate may  
10 make any health care decision on behalf of the incapacitated individual consistent  
11 with sub. (8).

12           **(10)** If necessary to implement the health care decisions that a surrogate is  
13 authorized to make, in accordance with the desires of the incapacitated individual,  
14 the surrogate may sign or otherwise execute any documents, waivers or releases  
15 related to the incapacitated individual's care or treatment.

16           **SECTION 7.** 252.15 (2) (b) (intro.) of the statutes is amended to read:

17           252.15 **(2)** (b) (intro.) The health care provider, blood bank, blood center or  
18 plasma center that subjects a person to a test for the presence of HIV, antigen or  
19 nonantigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall,  
20 in instances under those paragraphs in which consent is required, provide the  
21 potential test subject with an informed consent form for testing or disclosure that  
22 ~~shall contain the following information and on the form shall obtain the potential test~~  
23 ~~subject's signature or may, if, If the potential test subject has executed a power of~~  
24 ~~attorney for health care instrument under ch. 155 and has been found to be~~  
25 ~~incapacitated under s. 155.05 (2), the health care provider, blood bank, blood center~~

**SENATE BILL 312****SECTION 7**

1 or plasma center may instead obtain the signature of the health care agent. If the  
2 potential test subject has not executed a power of attorney for health care instrument  
3 under ch. 155 and has been found to be incapacitated under s. 155.90 (3), the health  
4 care provider, blood bank, blood center or plasma center may instead obtain the  
5 signature of the surrogate under s. 155.90 (2). The informed consent form for testing  
6 and disclosure shall contain all of the following information:

7 **SECTION 8.** 252.15 (2) (b) 1. of the statutes is renumbered 252.15 (2) (b) 1.  
8 (intro.) and amended to read:

9 252.15 (2) (b) 1. (intro.) The name of the potential test subject who is giving  
10 consent and whose test results may be disclosed and, if one of the following:

11 a. If the potential test subject has executed a power of attorney for health care  
12 instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2),  
13 the name of the health care agent.

14 **SECTION 9.** 252.15 (2) (b) 1. b. of the statutes is created to read:

15 252.15 (2) (b) 1. b. If the potential test subject has not executed a power of  
16 attorney for health care instrument under ch. 155 and has been found to be  
17 incapacitated under s. 155.90 (3), the name of the surrogate under s. 155.90 (2).

18 **SECTION 10.** 252.15 (2) (b) 3. a. of the statutes is amended to read:

19 252.15 (2) (b) 3. a. The signature of the potential test subject or, if the potential  
20 test subject has executed a power of attorney for health care instrument under ch.  
21 155 and has been found to be incapacitated under s. 155.05 (2), of the health care  
22 agent, or, if the potential test subject has not executed a power of attorney for health  
23 care instrument under ch. 155 and has been found to be incapacitated under s. 155.90  
24 (3), the signature of the surrogate under s. 155.90 (2), providing informed consent for  
25 the testing and the date on which the consent is signed.

**SENATE BILL 312**

1           **SECTION 11.** 252.15 (2) (b) 3. b. of the statutes is amended to read:

2           252.15 (2) (b) 3. b. The name of a person to whom the potential test subject or,  
3 if the potential test subject has executed a power of attorney for health care  
4 instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2),  
5 the health care agent, or, if the potential test subject has not executed a power of  
6 attorney for health care instrument under ch. 155 and has been found to be  
7 incapacitated under s. 155.90 (3), the surrogate under s. 155.90 (2), authorizes that  
8 disclosure of test results be made, if any, the date on which the consent to disclosure  
9 is signed, and the time period during which the consent to disclosure is effective.

10           **SECTION 12.** 252.15 (3) of the statutes is amended to read:

11           252.15 (3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for  
12 the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV  
13 under sub. (2) (b) or, if the person has executed a power of attorney for health care  
14 instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2),  
15 the health care agent or, if the test subject has not executed a power of attorney for  
16 health care instrument under ch. 155 and has been found to be incapacitated under  
17 s. 155.90 (3), the surrogate under s. 155.90 (2), may authorize in writing a health care  
18 provider, blood bank, blood center or plasma center to disclose the person's test  
19 results to anyone at any time subsequent to providing informed consent for  
20 disclosure under sub. (2) (b) and a record of this consent shall be maintained by the  
21 health care provider, blood bank, blood center or plasma center so authorized.

22           **SECTION 13.** 252.15 (5) (a) (intro.) of the statutes is amended to read:

23           252.15 (5) (a) (intro.) An individual who is the subject of a test for the presence  
24 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or the  
25 individual's health care agent, if the individual has executed a power of attorney for

**SENATE BILL 312****SECTION 13**

1 health care instrument under ch. 155 and has been found to be incapacitated under  
2 s. 155.05 (2), or, if the individual has not executed a power of attorney for health care  
3 instrument under ch. 155 and has been found to be incapacitated under s. 155.90 (3),  
4 the surrogate under s. 155.90 (2), may disclose the results of the individual's test to  
5 anyone. A person who is ~~neither~~ not the individual ~~nor~~, the individual's health care  
6 agent or a surrogate under s. 155.90 (2) may not, unless he or she is specifically  
7 authorized by the individual to do so, disclose the individual's test results except to  
8 the following persons or under the following circumstances:

9 **SECTION 14.** 252.15 (5) (a) 1. of the statutes is renumbered 252.15 (5) (a) 1.  
10 (intro.) and amended to read:

11 252.15 (5) (a) 1. (intro.) To the subject of the test and, if to one of the following:

12 a. If the test subject has executed a power of attorney for health care instrument  
13 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health  
14 care agent.

15 **SECTION 15.** 252.15 (5) (a) 1. b. of the statutes is created to read:

16 252.15 (5) (a) 1. b. If the test subject has not executed a power of attorney for  
17 health care instrument under ch. 155 and has been found to be incapacitated under  
18 s. 155.90 (3), the surrogate under s. 155.90 (2).

19 **SECTION 16.** 632.67 of the statutes is amended to read:

20 **632.67 Effect of power of attorney for health care.** Executing or failing  
21 to execute a power of attorney for health care instrument under ch. 155 may not be  
22 used to impair in any manner the procurement of a life insurance policy or to modify  
23 the terms of an existing life insurance policy. A life insurance policy may not be  
24 impaired or invalidated in any manner by the exercise of a health care decision by  
25 a health care agent or surrogate on behalf of a person whose life is insured under the

**SENATE BILL 312**

1 policy and who has if the health care agent or surrogate is authorized the health care  
2 agent to make the decision under ch. 155.

3 **SECTION 17.** 632.775 (2) of the statutes is amended to read:

4 632.775 (2) EFFECT ON DISABILITY POLICIES. Executing or failing to execute a  
5 power of attorney for health care under ch. 155 may not be used to impair in any  
6 manner the procurement of a disability insurance policy or to modify the terms of an  
7 existing disability insurance policy. A disability insurance policy may not be  
8 impaired or invalidated in any manner by the exercise of a health care decision by  
9 a health care agent or surrogate on behalf of a person who is insured under the policy  
10 and who has if the health care agent or surrogate is authorized the health care agent  
11 to make the decision under ch. 155.

12 **SECTION 18.** 880.33 (3) of the statutes is amended to read:

13 880.33 (3) In a finding of limited incompetency, guardianship of the person  
14 shall be limited in accordance with the order of the court accompanying the finding  
15 of incompetence. If the proposed incompetent has executed a power of attorney for  
16 health care under ch. 155, the court shall give consideration to the appointment of  
17 the health care agent for the individual as the individual's guardian. If the proposed  
18 incompetent has not executed a power of attorney for health care under ch. 155, the  
19 court shall give consideration to the appointment of the surrogate under s. 155.90 (2).  
20 The court shall make a specific finding as to which legal rights the person is  
21 competent to exercise. Such rights include but are not limited to the right to vote,  
22 to marry, to obtain a motor vehicle operator's license or other state license, to hold  
23 or convey property and the right to contract. The findings of incompetence must be  
24 based upon clear and convincing evidence. The court shall determine if additional  
25 medical or psychological testimony is necessary for the court to make an informed

**SENATE BILL 312****SECTION 18**

1 decision respecting competency to exercise legal rights and may obtain assistance in  
2 the manner provided in s. 55.06 (8) whether or not protective placement is made. The  
3 guardian, ward or any interested person may at any time file a petition with the court  
4 requesting a restoration of any such legal right, and specifying the reasons therefor.  
5 Such petition may request that a guardianship of the person be terminated and a  
6 guardianship of property be established.

7 **(END)**